mixed chance and skill or for money or money's worth. As such the game so played by the 5 respondents is not gaming within the meaning of the Ordinance. Since it is not so, the fact that it is played in a public place will not contravene s. 7(2) of the Ordinance. In the event the 5 respondents cannot be convicted on the charge notwithstanding the fact that they pleaded guilty to it and admitted to the brief facts tendered.

The learned Deputy also submitted that if the respondents had pleaded guilty to something which is not an offence, the learned Magistrate cannot accept the plea but must reject it and set the case down for trial. In the circumstances of this case I do not think that I can agree with this line of submission. The learned Magistrate is obliged to do so only in circumstances under s. 173(c), which is not the case here for the respondents had pleaded guilty unequivocally and did not claim to be tried and fully admitted to the evidence in the brief facts. It is a case which falls squarely within paragraph (f) of s. 173 of the CPC. The alternative left to the learned Magistrate is to discharge the accused amounting to acquittal for lack of evidence by the prosecution which he did in this case.

In the circumstances, the learned Magistrate has come to the correct finding that the element of "gaming" was not proven by the prosecution in its evidence. So the order made though in the form of an unconditional discharge, in the light of what has been said earlier it amounts to a discharge amounting to an acquittal which is proper in the circumstances of the case. I accordingly dismiss the appeal by the Public Prosecutor.

PUBLIC PROSECUTOR

v.

RAJMA BTE ABDULLAH

HIGH COURT, TAWAU
TUAN IAN H.C. CHIN JC
[CRIMINAL TRIAL NO. T3 OF 1989]
12 MAY 1993

CRIMINAL LAW: Dangerous drugs - Accused charged with trafficking in cannabis in contravention of s. 39B(1)(a) & s. 39B(2), Dangerous Drugs Act - Accused arrested with a raffia bag - Whether bag contained 644.50 grammes of cannabis - Possession of cannabis - Whether established that accused in possession of cannabis - Presumptions of knowledge and trafficking - Whether rebutted.

The Accused was charged with trafficking in 644.50 grammes of cannabis in 1987 at the bus station in front of Kampung Singgahmata, Lahad Datu, Sabah, in contravention of s. 39B(1)(a) and punishable under s. 39B(2) of the Dangerous Drugs Act.

The prosecution evidence was that, on 17 April 1987, on receiving information that a woman carrying a raffia bag containing cannabis would be proceeding towards the bus station, Lahad Datu, between 4.00 p.m. and 4.30 p.m., three police constables in plain clothes lay in ambush near the bus station. They saw the Accused walk towards the bus station. They did not see anyone approach the Accused. They arrested the Accused when she was near the station. The Accused let go of a raffia bag she was carrying and tried to run away. The raffia bag was opened in front of the Accused and was found to contain a number of things, including dried vegetable matter. This dried vegetable matter was taken to a chemist. It was found to be 644.50 grammes of cannabis.

The Accused's evidence was that she had come to Sabah from the Philippines when she had received a letter from her nephew Omar that his wife about to give birth. She had entered Sabah illegally. She had been taken to Kampung Singgahmata by the driver of the bus, a man called Munap. She had stayed in Kampung Unta for a month, and had come to Kampung Singgahmata on her way back to the Philippines *via* Semporna when she had been arrested carrying a handbag and a raffia

bag. The Accused claimed that she had arrived at the bus station at Lahad Datu with two bags, a handbag and a moderately big bag, that while she was looking for Munap, she had been approached by a stranger, who said he would look for Munap. The man had later returned with a raffia bag, taken her big bag, and given the lighter bag to her, assuring her that it contained only papaya, and had asked her to take it to the bus, and she had been arrested when she was on her way to the bus. She was not told why she was arrested. She was taken to the police station. The raffia bag was opened in front of her, and there was only papaya in it. The Accused denied that the raffia bag that she had been carrying was the one produced in court.

Held:

[1] The presumption of possession, knowledge and trafficking had been activated for which the Accused had to answer. There was sufficient evidence to show that the Accused was in physical custody or control of the cannnabis. The defence could, therefore, be called straightaway, without the submission that there was no case being heard.

[2] The prosecution had proved its case beyond any reasonable doubt. The presumptions of possession, knowledge and trafficking had not, on the balance of probabilities, been rebutted by the Accused. There was nothing in the evidence of the Accused nor of the prosecution that raised any doubt, on a balance of probabilities, as to the guilt of the Accused. The evidence regarding the cannabis was clear beyond any reasonable doubt. The cannabis was carried by the Accused before she was arrested. The evidence showed an unbroken chain regarding the cannabis, though regarding the raffia bag, it had not been explained how it had turned up in Court after it had been locked up in the drawer of one of the police officers.

[The Accused to be hanged.
The cannabis to be destroyed, but destruction not to be carried out until after the disposal of the appeal against the judgment].

Legislation referred to:
DangerousDrugs Act, ss. 39B(1)(a), (2)

For the accused - Rosslin Peter Rosen
For the prosecution - Ahmad Kamal bin Md. Shahid, DPP

JUDGMENT

Ian H.C. Chin JC:

I. *The Charge*

The Accused Rajma bte Abdullah was charged with trafficking in 644.50 grammes of cannabis on 17 April 1987 at about 4.20 p.m. at the bus station in front of Kampung Singgahmata, in the District of Lahad Datu, in the State of Sabah, in contravention of s. 39B(1)(a) and punishable under s. 39B(2) of the Dangerous Drugs Act.

II. *Prosecution Evidence*

It all began, according to one constable Nasyaruddin bin Ahmad (PW5), on 17 April 1987 when he while buying vegetable at the market in Lahad Datu at 2.30 p.m. he was fed information by someone that a woman would be carrying a raffia bag containing cannabis and that this woman would emerge between 4.00 p.m. and 4.30 p.m. from Kampung Singgahmata, Lahad Datu, and would proceed to the bus station *via* the second bridge. The information also indicated that the woman would be carrying a travelling bag. He continued with his marketing before he returned to the police complex in Lahad Datu where he went to the home of one constable Mustafa Albakri Bin Hussein (PW7) and constable Okab Sigar (PW6) to ask them to join him for an ambush as a result of the information he received. He then drove his car taking PW6 and PW7 with him. Inside the car he briefed PW6 and PW7 the information he received and indicated to them the hand signal he would give if he had the woman in sight. He, PW6 and PW7 reached the place of ambush at about 3.30 p.m. and he positioned PW6, PW7 and himself at various spots near the bus station. They were all not in uniform, not armed and without handcuffs. At 4.20 p.m. he saw the Accused emerge from Kampung Singgahmata. The Accused carried a raffia bag with her right hand while a travelling bag was slung over her shoulder and clasped under her armpit. He signalled PW6 thereafter he and PW6 walked slowly towards the bus station which was in front of them. The accused was also walking towards the bus station. When they were all near the bus station and near to each other, he showed his warrant card to the Accused and said to the Accused: "kami

polis". The Accused let go of the raffia bag (Exhibit P14), turned pale, looked frightened, turned and tried to run away. She was prevented by PW6 who held the Accused hands behind her back. The accused struggled unsuccessfully to free herself. The open-end of the raffia bag (Exhibit P14) was twisted together. He opened the raffia bag (Exhibit P14) by untwisting the open-end of the raffia bag (Exhibit P14) in front of the Accused and from inside the raffia bag (Exhibit P14) he found the plastic shopping bags (Exhibits P8(a), P8(b) and P8(c), the papers (Exhibits P9, P10(a) and P10(b)), the dried vegetable matter (Exhibit P11) and string (Exhibit P12). He then took all the said exhibits to the car where PW7 was waiting. PW6 escorted the Accused to the car and she was still carrying the travelling bag slung over her shoulder. PW7 drove the car, with the Accused seated in the backseat of the car in between PW5 and PW6, to the district headquarters of the Lahad Datu Police. He was holding all the said exhibits all the while until he handed the same to one Inspector Suhaimi Bin Hj Wiro (PW2) at the said police district headquarters whom he had earlier over the telephone informed of the arrest of the Accused. He made a police report (Exhibit P13) after being told to do so over the phone by PW2. He handed the Accused, the police report (Exhibit P13) and the said exhibits to PW2 after PW2 had at about 4.30 p.m. arrived at the police district headquarters. He said he at 10.00 p.m. that night took Inspector Mohd Azim Khan @ Avtar Singh (PW4) to the scene of crime to enable PW4 to draw a sketch plan (Exhibit P15). PW6 confirmed that PW5 did come to his house on the day in question but he added that it was at about 3.00 p.m. PW6 testified that it was about 4.15 p.m. that he first saw the Accused carrying Exhibit P14 and a travelling bag on a bridge. He confirmed that PW5 showed his warrant card and said to the Accused : "kami polis" and the Accused let go of the raffia bag. He also testified that the Accused was arrested by him after she had tried to run away. He did not see what were inside Exhibit P14. He took the Accused to the car while PW5 took Exhibit P14. He also confirmed the fact that the Accused carried a travelling bag, that PW5 made a phone call to PW2 and that PW5 handed Exhibit P13, the Accused and Exhibit P14 to PW2.

PW7, the other member of the ambush party, also confirmed the visit of PW5 to his house, PW5's request that he joined him for an ambush and that he was briefed by PW5 in the car on the information PW5 received concerning a woman who would carry cannabis. He saw the Accused approach the bus station carrying Exhibit P14 and a travelling bag. He testified that it was PW5 who carried Exhibit P14 to the car and that thereafter he (PW7) drove the car to the police district headquarters of Lahad Datu. He also confirmed the handing over of Exhibit P13, the Accused and Exhibit P14 by PW5 to PW2 at the police district headquarters, Lahad Datu.

PW2 confirmed receiving a phone call from PW5 which he added was at 4.25 p.m. over which he was briefed of the arrest of the Accused and the discovery of dried vegetable matter believed to be cannabis; after which he instructed PW5 to make Exhibit P13. He arrived at the police district headquarters, Lahad Datu, at about 4.35 p.m. where he was handed the said exhibits and Exhibit P13 and they were taken to his office. At 4.45 p.m. he called PW4 to his office. He and PW4 then in the presence of the Accused removed the contents of Exhibit P14 and he found the contents to be the Exhibits P8(a), (b) & (c), P9, P10(a) & (b), P11 and P12. He weighed Exhibit P11 and found its weight to be 660 grammes. He inspected the travelling bag of the Accused and found the same to contain powder and items of makeup. He returned them to the Accused and he handed to PW4 the said exhibits. He thereafter caused the Accused to be locked up. PW4 took the said exhibits away and that was the last time he saw the said exhibits until they were produced in court and after they were taken out of the package wrapped by the brown paper (Exhibit P5) which PW4 gave him on 15 June 1987 at 8.30 a.m. and which he locked in the exhibit store. On 1 June 1988 he handed over his responsibility of the exhibit store, in which the exhibits were kept, to one constable Khamis Timbang (PW3). As for Exhibit P14, he saw the same again only when it was produced in court after he had on 17 April 1987 handed the same to PW4.

PW4 confirmed the phone call from PW2 and the examination of the said exhibits in the presence of the Accused and in the office of PW2. He was handed the said exhibits which

he locked up in his desk in his office in the Lahad Datu police district headquarters. At 10.30 p.m. that night, he went with PW5 to the scene of crime and drew Exhibit P15. On 30 April 1987 he took the exhibits out from his drawer and placed the said exhibits (except for Exhibit P14 which he kept under lock in a drawer) in a brown envelope (Exhibit P7) which he in turn placed inside a box (Exhibit P6). The box (Exhibit P6) was thereafter wrapped by him with a brown paper (Exhibit P5) on which he wrote the various identification marks. The package containing all the said exhibits (except Exhibit P14) was then placed in the drawer and locked until 2 May 1987 when he took it and went to Kota Kinabalu to hand it to the chemist Khalid Safan (PW1) together with a request (Exhibit P2) that he examined and analysed Exhibit P11 that was wrapped in the package. PW1 issued him a receipt (Exhibit P3). On 13 June 1987 he collected the package from PW1 together with the chemist report (Exhibit P16) and upon his return to Lahad Datu he locked the same in his drawer. On 15 June 1987 he handed the package to PW2 together with the chemist report. There is no mention as to what happened to the raffia bag (Exhibit P14) after the same was locked in the drawer by him.

PW3 confirmed what PW2 had testified with regards to the taking over of the duty of guarding the exhibit store and he was the one who took the package wrapped with the brown paper (Exhibit P5) to court.

PW1 confirmed his meetings with PW4. He examined Exhibit P11 which was given to him by PW4 and found the same to weigh 644.50 grammes and found them to be cannabis. He also confirmed returning the exhibits to PW4.

It was upon those evidence that I have just summarised that I called for the defence after declining to hear submission from Counsel for the Accused that there was no case. At that stage of the proceedings, there were evidence to show that the Accused was in physical custody or control of Exhibit P11 which was analysed by PW1 to be cannabis and to weigh 644.50 grammes. The presumptions of possession, knowledge and trafficking have been activated for which the Accused had to answer. I am aware of various discrepancies in the evidence of the prosecution but at that stage they do not detract from a *prima facie* case being established. I will now proceed to set out the evidence of the Accused which she gave on oath.

III. *The Defence Evidence.*

The Accused testified that she does not know her age and that she entered Sabah illegally after receiving a letter from a nephew called Omar that his wife was about to give birth. She came by sea and landed in the house, built on stilt over the sea, of one called Norma (a cousin of her late husband) in Kampung Simunul, Semporna. She came with a handbag and a moderately big bag which had a strap and a handle. After seven days with the said Norma, she left for Lahad Datu by bus carrying the said bags. The trip was arranged by Norma. After her arrival at Lahad Datu she was taken by the driver of the bus called Munap to a house in Kampung Singgahmata where she stayed for one night before she was taken to Kampung Unta by the wife of Omar who came the next day to fetch her. She stayed with Omar in Kampung Unta for one month before she returned to Kampung Singgahmata in order to make the return trip to the Philippines *via* Semporna which Munap will send her by bus; this was prearranged with the said Munap.

It was on the day she was arrested, that is 17 April 1987, that at about 4.00 p.m. she left Kampung Singgahmata in order to catch the bus of Munap for the trip to Semporna to return to the Philippines. She was carrying the moderately big bag with her right hand while the handbag was slung over her shoulder and clasped under her armpit. There were a lot of people around when she was on the bridge on her way to the bus station to meet Munap and this meeting was prearranged. When she reached the bus station, Munap was not to be found. A man spoke in Suluk and asked her where she wanted to go and she replied that she was looking for Munap to which the man replied and said he will look for Munap for her. The man left and returned with a white bag that was also made of raffia but half the size of Exhibit P14. The bag had two straps that serve as the handle. She saw the stem of a papaya jutting out of the bag which the man brought. The man also told her that the bag only

contained papaya. The man offered to take her moderately big bag while she was to carry the raffia bag with the papaya because the latter bag was lighter. The said bags were then swapped. She was asked by the man to take the raffia bag to the bus which was 40 feet away. After taking only two steps, PW5 came and held her hand. PW5 took his pistol and pointed it at her right temple and PW5 asked her not to make any noise. PW5 had an identification card pinned to his shirt and which card had a photo showing the person in uniform. PW5 then shouted for Pidling. Two men came as a result; one was PW6 and the other Pidling. She was not told why she was arrested. She was then taken to a car with her still carrying the raffia bag which she placed on the floor of the car after she had entered the car. She was seated at the back together with Pidling. PW5 and PW6 were also in the car. When they reached the police station she took the raffia bag into the building thereafter PW5 took the raffia bag from her. PW5 asked her what was inside the bag and she replied there was papaya. PW5 then opened the raffia bag and she saw papaya inside the raffia bag. She did not see any thing else in the raffia bag. PW5 then uttered the word "ganja" while Pidling asked her in Suluk to admit. She did not understand what "ganja" meant and what was there to admit. The raffia bag was thereafter retied by PW5 and taken by PW2. It was in the office of PW2 that she was for the first time shown the cannabis (Exhibit P11) and she was asked by PW2 to admit. Pidling and PW5 were also there. She did not admit. She denied having been shown Exhibit P14 by PW2.

Therefore the immediate task of the court is to determine which of the two versions, that of the prosecution or that of the Accused, of the events on 17 April 1987 is the truthful one.

IV. *Findings of the Court.*

The prosecution had put questions to the Accused in such a manner as to suggest that she was lying in every aspect of her evidence where they contradicted that of the prosecution or where the prosecution had not led any evidence relating thereto. I cannot say that the Accused was lying when she said she came to Sabah as a result of Omar's letter, when she said her bus trip was arranged by Norma and when she said there was a bus driver called Munap. Nothing in her demeanor nor in the evidence of the prosecution can suggest she is not a witness of truth in this aspect of her evidence. I do not see how the Accused, a first timer to Sabah, can get around from one place to another without the help of others and without getting on a bus. Therefore people she mentioned, Omar, Norma and Munap, could very well exist. Of course, the fact that she was truthful in some aspect of her evidence does not necessarily mean she is truthful in all her evidence. It is not in dispute that it was on 17 April 1987 that the Accused was coming from Kampung Singgahmata to the bus station. The Accused said she was carrying not Exhibit P14 but a moderately big bag which the man she met at the bus station had ran away with after the police arrested her. In view of the Accused's contention that she emerged from Kampung Singgahmata at 4.00 p.m. and that Exhibit P14 was not the raffia bag she had carried, the evidence of the prosecution will have now to be re-examined in its minute detail. PW5 evidence was that he saw the Accused with Exhibit P14 at 4.20 p.m. when she was emerging from Kampong Singgahmata and that was about 50 metres away from him and she was walking slowly towards the bus station. PW6 said he saw the Accused on the bridge with Exhibit P14 at about 4.15 p.m. PW7 said he saw the Accused near the bus station at 4.15 p.m. This difference in the time could very well be due to the fact that the respective watches of PW5, PW6 and PW7 had shown different times. Therefore, the discrepancy, if that is at all such, in the recollection of the time should not cast doubt on their evidence that they saw the Accused carry Exhibit P14. What then of the fact that Exhibit P14 was not marked at all for identification purposes by any of the police witnesses and of the fact that no account was given as to how Exhibit P14 ended in the court from the locked drawer of PW4. Could such omissions create any doubt as to the identification in court of Exhibit P14 which PW5, PW6, PW7, PW2 and PW4 made in court ? When PW5 was testifying concerning Exhibit P14, the questions put by Counsel for the Accused to PW5 were directed only as to whether the Accused was holding Exhibit P14 in her left or right hand and only also as to whether Exhibit P14

contained any papaya. PW6 had described the raffia bag as having printed on it the picture of a horse and he thereafter testified that Exhibit 14 was the raffia bag which he saw the Accused carry. His evidence was not challenged at all. PW2 also testified he received Exhibit P14 from PW5 and that he thereafter handed the same to PW4. Here again this was not challenged. PW4 had testified and explained that the exhibits that are produced in court, including Exhibit P14, are the exhibits which PW2 had handed to him and those were the only exhibits kept in his drawer and that is why he is able to say those are the exhibits; which explanation I accept and find plausible. I therefore find as a fact that the Accused was carrying Exhibit P14 with Exhibit P11 inside despite the absence of any explanation as to how Exhibit P14 turned up in court and despite the lack of marking on Exhibit P14 because the said exhibits have been positively identified and, in some aspects, not challenged by the Accused. This leads me to the events immediately before and after the arrest of the Accused where the evidence of the prosecution and of the Accused differs. It will be recalled that the prosecution case is that prior to the arrest of the Accused no one, except PW5 and PW6, approached the Accused, no one swapped any bag with the Accused and the Accused was still holding Exhibit P14 (with the cannabis (Exhibit P11) inside) with her right hand; whereas the Accused's case is that, just after she had taken two steps, PW5 arrested her while she was carrying a raffia bag (and not Exhibit P14) which a man had given her to carry because it was lighter than her own bag which she swapped with the man. The circumstances attending the swapping of bags which the Accused described made the allegation of the Accused inherently improbable. In the first place the Accused had already allegedly carried her own bag which contained clothing, blanket and 3,000 pesos from Kampung Singgahmata to the bus station without any complain that it was heavy. In the second place there was no reason for her to go out of her way to carry the bag for the man to a bus when she was supposed to wait for Munap the bus driver who had yet to turn up and no explanation was given as to why she wanted to go to the bus. Finally, nothing further was said by the Accused as regards Munap whom the man was supposed to look for her; one would at least expect the Accused to ask the man as to where Munap was when the man returned without Munap and instead the Accused wants the court to believe her that she sheepishly agreed to carry the man's bag to a bus not caring and not enquiring further about Munap. When this is considered together with the evidence of PW5, it is not possible that the Accused was carrying a raffia bag other than Exhibit P14 and it is not probable that a man had swapped bags with her in order that she could carry a lighter bag. That it could not be true that the Accused was not carrying Exhibit P14 could also be gathered from the manner which the Accused's case was asserted at the prosecution stage; it was asserted in questions put to PW5 that the police at the police district headquarters took the 3,000 pesos which the Accused had kept in a purse which her right hand held before the police removed it from her. But in answer to a question put by the court, the Accused said that the 3,000 pesos was in the bag which man had ran away with. The Accused also put question to PW5 to the effect that PW5 opened a raffia bag at the bus station and saw a papaya but in her evidence, the raffia bag was not opened until she carried the raffia bag into the police district headquarters. The accused was therefore blowing blow hot and cold and she therefore lacks credibility when she asserted that there was another raffia bag. Similarly, the Accused could not be believed in her assertion that there was another man and there was a swapping of bags. From her demeanor, I conclude that she is obviously not a truthful witness; this is more so when the allegation of the existence of the man and the swapping of the bags were not put to the prosecution witnesses. I therefore also find as a fact that PW5 did show Exhibit P11 to the Accused at the bus station after the Accused was arrested and after Exhibit P11 was removed from Exhibit P14 and I reject, for the reasons already given, her assertion that she was not shown Exhibit P11 at the bus station.

Next to be considered is whether it was PW5, PW6 and PW7 that arrested the Accused as contended by the prosecution or it was PW5, PW6 and another person, called Pidling, as contended by the Accused. The accused version is not to be believed. One reason for

preferring the prosecution's version is the vacillation of the Accused. She in question put to PW5 asserted that PW5, PW6 and PW7 took her purse containing money but in her evidence she maintained that there was no such person as PW7 but instead there was a person called Pidling. Apart from that the existence of Pidling and the absence of PW7, as contended by the Accused, were never put to PW5, PW6 and PW7. In fact, the evidence of PW5, PW6 and PW7 with regards to their being in the ambush party, with regard to PW5 and PW6 approaching the Accused and arresting the Accused, were never challenged at all. That being the case, there cannot be any truth in the Accused's allegation that another person called Pidling, instead of PW7, was involved in her arrest. I therefore find that there was no such person called Pidling and that this alleged person was never involved in the ambush, arrest and escort to the police district headquarters of the Accused. It follows that I also accept as the truth the evidence of PW5, PW6 and PW7 with regards to the journey back to the police district headquarters from the bus station after the arrest of the Accused which was that the car was driven by PW7 and the Accused was seated at the back in between PW5 and PW6 and that it was PW5 who was holding Exhibit P14 containing Exhibit P11 all the while after they were taken from the ground and after the Accused had dropped them until they were handed over to PW2. I also accept PW5, PW6 and PW7's evidence that they did not carry any gun; in any event it was not put to them that they had carried guns or that PW5 had pointed the gun at the temple of the Accused. The journey through the evidence leads me to the police district headquarter where the Accused was, after her arrest at the bus station, taken by PW5, PW6 and PW7. I have given my reasons for rejecting the story of the Accused that there was another raffia bag and not Exhibit P14. It follows that her evidence of the opening of the raffia bag at the police district headquarters and of the discovery of a papaya and nothing else inside the bag is also rejected. It was also not put to the witnesses of the prosecution that the raffia bag was opened in the police district headquarter nor was it put that there was only a papaya and nothing else found in the raffia bag when at the police district headquarters.

What remains to be done is to consider, despite the rejection of the story of the Accused, whether nevertheless there is any doubt created on a balance of probabilities in the case of the prosecution and whether the presumptions of possession, knowledge and trafficking had, on a balance of probabilities, been rebutted by the Accused.

V. *Whether presumptions rebutted & whether reasonable doubt created.*

What the Accused was caught carrying was not only Exhibit P14 but the plastic bags (Exhibits P8), the papers (Exhibits P9 and P10) and the cannabis (Exhibit P11) as well. In so far as Exhibit P11 is concerned - PW5 had given evidence as to its recovery from Exhibit P14 which the Accused was carrying just before her arrest and of the same being handed over to PW2; PW2 had given evidence of the handing over of Exhibit P11 to PW4, PW4 had given evidence how he had packed and delivered Exhibit P11 to PW1 and how the same was returned to him by PW1 and how thereafter it was again handed to PW2 who put it in the exhibit store which was then under his care until PW3 took over duty from him; and PW3 testified to bringing Exhibit P11 to court. There is no break in the chain of evidence as regards Exhibit P11. The Accused had failed to rebut the presumption of possession which arose as a result of the Accused being caught carrying Exhibit P11.

The cannabis was wrapped in layers after layers of papers and plastic bags obviously for the purpose of concealing the same and this coupled with the fact that the Accused had attempted to run away after she was arrested is indication enough that she knew she was carrying cannabis. The accused simply denied ever seeing the cannabis Exhibit P11 until it was shown to her by PW2; this evidence I had rejected. The Accused has failed to rebut the presumption of knowledge.

The chemist found Exhibit P11 to be cannabis and to weigh 644.50 grammes which raises the presumption of trafficking. The Accused denies ever carrying Exhibit P11, a denial the court rejected. The Accused had therefore also failed to rebut the presumption of trafficking.

I have taken myself through the evidence of the Accused, part by part and in their entirety and I have also considered the discrepancies in the evidence of the

prosecution. There is nothing in the evidence of the Accused nor in the evidence of the prosecution that raises any doubt, on a balance of probabilities, as to the guilt of the Accused. The evidence regarding Exhibit P11 is clear beyond any doubt; it was carried by the Accused before she was arrested; it shows an unbroken chain regarding Exhibit P11 despite the fact that it was not explained how Exhibit P14 turned up in court from the drawer of PW4.

IV. *Conclusions.*

The prosecution therefore had proved its case beyond any reasonable doubt. I therefore find the Accused guilty of the offence of trafficking in 644.50 grammes of cannabis on 17 April 1987 under s. 39B(1)(a) of the Dangerous Drugs Act, 1952 and I accordingly convict her of the said offence.

The Accused though she said she did not know how old she was at the date she gave evidence, which was on 19 April 1993, but, she, nevertheless, gave us the clue if not the answer to her age when she said her eldest son was 25 years old. If her her eldest son is 25 years old in April 1993, he would be 19 years old in 1987. Since the eldest son of the Accused was already 19 years old in 1987, it must follow, it being impossible that her natural son to be younger than her, that the Accused was at least 19 years old in 1987. Of course, the Accused was much older than that since she can only be of child bearing ability after she had attained a certain age. This fact and together with my visual inspection of the Accused satisfied me that the Accused was at the date of the offence over the age of 18 years old. I must therefore pass the sentence which the law imposed which is death. Accordingly, the Accused is sentenced to death and she shall be hanged by the neck till she is dead.

The cannabis shall be destroyed by burning in the compound of the court and the destruction shall be witnessed by the Senior Assistant Registrar of the High Court in Borneo at Tawau but the destruction shall not be carried out until after the disposal of the appeal against the judgment herein. The cannabis shall in the meantime be kept by the police.

Reported by Shamsiah Begum Subhan.

TAI CHOI YU

v.

THE GOVERNMENT OF MALAYSIA & 2 ORS.

HIGH COURT, KUCHING
TUAN RICHARD MALANJUM JC
[ORIGINATING SUMMONS NO. MR. 17 OF 1991]
6 MARCH 1993

ADMINISTRATIVE LAW: Passport not renewed - Decision deferred - Failure to issue certificate - Non payment of income tax - Whether rights and liberties affected - Whether discretion exercised judiciously.

INTERPRETATION OF STATUTES: Two different statutes - Whether same construction must be given - Objective of s. 104 - Test to be used for s. 104 - Is s. 104 directory - Construction of the word "leave or leaving".

WORDS AND PHRASES: Definition of "notice" under s. 104(3).

The plaintiff is an Advocate of the High Court in Borneo. A total sum of RM246,482.39 was due and owing by the plaintiff as income tax. A certificate pursuant to s. 104 of the Income Tax Act 1967 (Certificate) was issued by the 2nd defendant to the 3rd defendant. The plaintiff was not informed of the issuance of the certificate.

The plaintiff applied for the renewal of his passport as the pages of his then existing passport had been used up although its validity had not expired. The plaintiff's passport was not renewed and his main complaint was the issuance of the certificate as it affected his liberties and rights under the Constitution and that he has thereby suffered loss and damages.

Held:

[1] It is a settled principle of construction of a statute that two statutes need not have the same interpretation for their respective provisions.

[2] The construction of any statutory provision in the nature of s. 104 of the Income Tax Act will have to be based on the subjective test requirement. As such it is a matter for the 2nd defendant to decide and cannot be substituted by an objective test in a Court of